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**EXHIBIT E** 

No. 3597 P. 2

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October 31, 2008

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RE: Gabriel Steif DOI: 02/27/2008 DOB: 04/25/1937

Mr. Pollak:

The following is my medical evaluation of Mr. Gabriel Stelf. Extensive records were reviewed as below. I interviewed and examined Mr. Stelf at my office at Mount Sinai Medical Center on July 31, 2008.

## Records Reviewed:

- 1. Response to Interrogatories dated 06/12/2008. The injuries claimed include severe and permanent injuries to his head.
- 2. Records from Dr. Morton Finkel.
- 3. Records from New York City Fire Department.
- 4. Records from Bellevue Hospital:
- 5. Records from Mount Sinal Medical Center.

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- 5. Records from Helen Hayes Hospital.
- 7. Records from Dr. Cotilar.
- 8. Records from Dr. Isaac Wuzburger.
- 9. Records from Dr. Michael Bronson.
- 10. Pharmacy records.
- 11. Employment records from B & H Photo.
- 12. Deposition testimony of Mr. Steif.
- 13, Report of Dr. Herbert Sherry.
- 14. Reports of Dr. Lewis Rothman.

FDNY Pre Hospital care report dated 0:2/27/08. Initial Glasgow Coma Scale score total was 15. Record reports that Nr. Stelf is a 70-year-old male who was found supine on the ground. He is alert and oriented x3. He had a six-inch laceration on his forehead. He was complaining of pain in his head and his left hand. He was a pedestrian struck by a bus. Mr. Stelf reported that there was a loss of consciousness.

Admission notes from Bellevue Hospital Center from 02/27/2008. Mr. Steif was fully oriented and his neurological examination was within normal limits.

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Mr. Steif was admitted to Bellevue Hospital Center on February 27, 2008 and discharged on February 28, 2008. Discharge summary reports that Mr. Steif has history of atrial fibrillation and was on Cournadin when he was struck by a bus on 02/27/2008. He had facial and occipital lacerations with complaints of right-sided chest pain. He also had right lateral fourth through eighth rib fractures and left lateral sixth and seventh rib fractures with adjacent hematomas. He had a Schatzker II fracture of the tibial plateau with lateral plateaued depression and oblique fracture to the distal fibula metaphysis with extension. Also a vertically oriented fracture of the posterior malleolus without extension into the Mortise. Impacted posteromedial metaphysis fracture with 2-3 mm posterior displacement of the left wrist.

CT scan of the left leg dated February 27, 2008 showed oblique, comminuted fracture to the lateral tibial plateau. Impression was Schatzker II tibial plateau fracture with 5 mm lateral plateau depression. Comminuted right fibular head impaction fracture. Old oblique fracture of the distal fibular metaphysis with extension into syndesmosis. Remote posterior malleoli fracture without extension into the mortise.

CT of the face from February 27, 2008 was negative for fracture.

Chest x-ray from February 27, 2008 showed left rib fractures and elevation of left hemidiaphragm.

X-ray of the left wrist showed transversely oriented fracture of the distal left radial metaphysis with slight impaction and posterior displacement of the cortical fragment.

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X-ray of the right knee from February 27. 2008 showed comminuted, obliquely oriented, intraarticular fracture to the right tibial plateau with 5-7 mm inferolateral displacement of the major fracture fragment. Right knee joint effusion with associated impacted fibular head fracture.

X-ray of the wrist and forearm from February 27, 2008 showed impacted left distal radial metaphysis fracture with 2-3 mm posterior displacement of the cortical fragment.

CT of the lungs from February 27, 2008 showed right lateral eight and left leteral sixth and seventh rib fractures.

Cervical spine CT from February 27, 2008 showed mild multilevel degenerative changes, most pronounced at C5-6 and multilevel facet arthropathy. Well corticated fragment anteroinferior to C6 without associated soft tissue swelling consistent with an osteophyte. Impression was no fractures or subluxations.

CT of the head from February 27, 2008, at Bellevue Hospital Center. CT shows prominent suici, consistent with age-related volume loss. No focal areas of abnormal attenuation are identified within the parenchyma of the brain. Impression was no acute intracranial pathology. Right frontal skin laceration extends to calvarial surface. Small left temporal calcified meningioma versus volume averaging. Left maxillary sinusitis.

X-ray of the pelvis from February 27, 2008 showed no fracture dislocation. Well corticated fragment along the right greater trochanter likely unfused apophysis versus prior avulsion injury.

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Mr. Steif was transferred to Mount Sinai Medical Center further care on 02/28/2008.

Mr. Stelf was admitted by Dr. Michael Bronson to Mount Sinal Medical Center for orthopedic care on 02/28/2008. On admission, Mr. Stelf was complaining of having felt dizzy when he was sitting up.

Mr. Stelf underwent open reduction and internal fixation of his tibial plateau fracture by Dr. Bronson on 02/28/2008 as well as casting of left wrist fracture.

On 03/04/08 physical therapy evaluation showed that Mr. Stelf required minimal assist for transfers and ambulation with a platform walker. Occupational therapy evaluation from 03/04/2008 showed Mr. Stelf required minimal assistance for transfers, moderate assistance for upper body dressing, maximal assistance for lower body dressing, and minimal assistance for ambulation with rolling walker. At that time, he was non-weightbearing on the right lower extremity and left upper extremity.

CT of the head done at Mount Sinal Medical Center on 02/29/08 showed nonspecific diffuse atrophy. Prominence of the extra-axial space over the frontal convexities, possibly secondary to cerebral atrophy. However, chronic subdural hematorna or subdural hygroma cannot be excluded. Likely chronic small vessel ischemic changes. Impression was no acute intracranial findings.

Neurologic consultation from 02/29/2008 reported that Mr. Stelf awoke from his injury with good recall and orientation. He was fully oriented, had good recall and no language deficits on examination. Impression was cerebral concussion.

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Mr. Steif underwent a cardioversion for his atrial fibrillation on by Dr. Gomez on 03/05/2008.

Mr. Stelf was discharged to Helen Hayes Hospital on 03/06/2008.

On admission to Helen Hayes Hospital on 03/06/2008 admission history and physical report that "it is not definite that he lost consciousness, but he has retrograde amnesia". He did not remember being in an ambulance but remembers the hospital. Admission neurologic examination was normal.

Mr. Stelf was discharged from Helen Hayes on 03/16/2008. At the time of discharge he was independent with bed mobility, independent with various activities. He was using a platform rolling walker and non-weightbearing on the right lower extremity. He is independent with his transfer activities. He was able to do his upper extremity dressing, but needs assist for lower extremity dressing.

Mr. Steif was seen by the orthopedist Dr. Joseph Laico on both May 27, 2008, and July 8, 2008. Dr. Laico's impression was multiple rib fractures, fracture of the let wrist, fracture of the right tibla, luceration of the forehead and occipital area of the scalp. He reported that the prognosis was good. He reported that Mr. Stelf requires physical therapy to improve the range of motion in his right knee three times a week for six weeks. He reported that at that time Mr. Stelf was already working as an executive at his previous employment full time. Follow up visit on July 8, 2008, reported impression, status post fracture of the ribs, status post fracture of the left wrist, status post fracture tibia with open fixation. Mr. Steif was working full time unrestricted as an executive for B&H. He reported

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no further orthopedic treatment or physical therapy was indicated and that Mr. Steif was not disabled.

Mr. Stelf was seen for neurologic consultation on June 19, 2008 with a report dated June 22, 2008 by Dr. Morton Finkel. Dr. Finkel reports that Mr. Stelf was having symptoms of vertigo when bending his neck. He is having neck pain with bilateral radiation. Diagnoses were cerebral concussion and cervical radiculopathy. He recommended Antivert and consideration of an EEG and electromyogram.

Follow-up with Dr. Finkel on July 27, 2008. There was no change in diagnosis. Dr. Morton reported the results of an electromyogram and nerve conduction studies done July 22, 2008 consistent with left cervical radiculopathy. EEG performed on July 22, 2008 was normal. Dr. Finkel reports Mr. Steif will need neuropsychiatric cognitive therapy and possible cervical injections or discectomy.

Mr. Stelf was seen in follow-up by Dr. Bronson on 4/8/08 and 4/29/08. Report from 4/29/08:" Doing exceptionally well. Range of motion in the left wrist is improving nicely. Walking with a good galt pattern. His x-rays show good healing."

I had a chance to review the videotape deposition of Mr. Stelf from July 9, 2008.

Records from Dr. Wurzburger, internist. Mr. Stelf was seen emergently on 10/15/07 for shortness of breath and nev/ onset of atrial fibrillation on 10/15/07. Report from Dr. Gitig to Dr. Wurzburger dated 10/16/07 reports that Mr. Stelf has COPD. Mr. Stelf continued to be followed up for his atrial fibrillation treated with Cournadin. Note from Dr. Shimony on 11/8/07 reports that Mr. Stelf has non-

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obstructive coronary artery disease and requires Coumadin and aspirin. Mr. Steif was most recently seen by Dr. Wurzbuger on 5/25/08. He reported occasional dizziness when bending over, fatigue and cliarrhea.

B&H Photo employment records confirm that Mr. Stelf has returned to work since his injury.

Reports from Dr. Lewis Rothman both dated August 8, 2008. CT of head from 2/27/08 and 2/29/08 show no intracranial injury. This is multifocal cortical atrophy. CT scan of the cervical spine from 2/27/2008 and 2/29/2008 both show degenerative changes at the C5-6 and C6-7 levels and no evidence of fracture.

Report from Dr. Herbert Sherry dated August 18, 2008, He reported Mr. Steif's fractures had healed.

#### Interview with Mr. Stelf

Mr. Stelf has good recollection of the morning of his injury. Prior to the accident the last thing he remembers is seeing the bus coming towards him. His next recollection is being in a hospital at Bellevue. No recollection of the ambulance. He reports that he does not know what time his first recollection was but it was the day of his injury. No confusion once he awake. He is not clear of the time frame of his loss of consciousness.

He was on Coumadin, a blood thinner, used for the atrial fibrillation that he has. He was on Coumadin at the time of his injury. He was taken off Coumadin at the time of his surgery. He has resumed Coumadin since. With regards to his

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cardiac status, he currently has a heart monitor prescribed by his cardiologist Dr. Goldberg for evaluation of his heart rhythm.

Mr. Steif complains of the following symptoms that he claims are related to the accident on 2/27/2008:

- 1. Positional dizziness. It is very intermittent. He states it usually happens when he goes from sit to stand. He is not on any medications for dizziness. He has had no falls since his injury. When the dizziness occurs he says it is usually seconds. It does not affect his walking, working or self-care.
- 2. Pain in the right knee. Not currently using any assistive device. He has resumed traveling back and forth to work, on the bus. He has recently stopped physical therapy but reports that his orthopedist plans to put him back on it at some point.
- 3. Decreased grip strength in the left hand. Mr. Stelf is right hand dominant.
- 4. Left shoulder pain.
- 5. He reports decreased endurance, decreased attention and concentration. He is working 7-8 hour days, 5 days per week. Generally leaves an hour earlier than he used to. Otherwise functionally he has resumed all of his previous activities.
- 6. Scar over the occiput and right forehead.

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7. Intermittent headaches. Tylenol resolves these. No pain at the scar sites.

# Past medical history:

Hyperl pidemia, hypertension, atrial fibrillation. Left cataract surgery. COPD.

### **Current medications:**

Tylenol p.r.n., Cozaar, Lipitor, atenolol, hydrochlorothiazide, Coumadin, pantoprazole, calcitriol.

Social history: Long history of tobacco per medical records.

### Allergies:

No known drug altergies.

#### Occupational History:

Mr. Steif has been working for nine years as an executive buyer. He reports that at the time of my examination he is working 36 hours per week.

### Educational History:

Yeshiva Eucation.

### Physical examination:

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General: Mr. Stelf is a pleasant male in no apparent distress.

HEENT: Mr. Stelf has a 3-inch diagonal wall-healed scar over his right forehead. A well-healed scar over his occiput. Both were nontender. No nystagmus.

Heart: Irregular.

Lungs: Clear to auscultation bilaterally.

Abdomen was soft, nontender with normosictive bowel sounds.

Extremities showed no clubbing, cyanosis or edema.

Neurologic examination: Mr. Steif was alert and oriented x 3. He had 2/3 recall at five minutes. His speech was fluent. He is a good historian. He is able to do serial 7s and simple math without difficulty. No ataxia. Attention and concentration were normal.

Functional examination: Mr. Stelf was able to go from a sit-to-stand and ambulate independently.

Musculoskeletal examination: Right upper extremity, left lower extremity with 5/5 motor strength throughout. Left upper extremity was 4+/5 grip strength, 5/5 proximally. Right lower extremity was 4/5 with knee extension and flexion limited by pain, 5/5 in hip flexion and plantar and dorsifiexion.

Sensation: Intact through out cervical and umbar dermatomes.

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Sensation: Intact through out cervical and umbar dermatomes.

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Gait: Mildly antalgic on the right leg. Normal arm swing. Good balance. Antalgia

was most noticeable with fast gait.

Impression:

Mr. Stelf is a 70-year-old man with a past medical history of significant cardiovascular disease who is status post being hit by a bus on May 27, 2008. Mr. Stelf sustained a mild concussion which has resolved, rib fractures, fracture of the left wrist, and fracture of the right tibia with open fixation. CT scan of the brain and EEG have not shown any injury. CT scans of the brain though does show evidence of cortical atrophy consistent with age related thinning of the brain cortex.

I am aware that Mr. Steif is currently undergoing further evaluations and has recently seen Dr. Finkel and had further testing. I will be happy to review any of this additional information.

Mr. Steif appears to have made an excellent recovery. He has returned to work at his previous employment. He does not need further treatments for any of his claimed injuries nor does he appear to need any. Fatigue and positional dizziness likely related to his chronic cardiac and pulmonary conditions. He is currently wearing a holter monitor to evaluate this.

Contrary to the claims made in the Response to Interrogatories Mr. Stelf did not sustain any severe or permanent injuries to his head or brain due to the 2/27/2008 accident. This claim is not supported by the medical records nor is it supported by any findings made during my interview and examination of Mr.

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Stelf. This claim is also not supported by the videotape deposition testimony of Mr. Stelf.

Contrary to Dr. Finkel's findings that are set forth in his July 22, 2008 report, Mr. Stelf cloes not require ongoing neurologic therapy. Mr. Stelf did not sustain memory impairment as a result of the accident. Furthermore, due to the 2/27/2008 accident Mr. Stelf did not sustain ay injuries that would require neuropsychiatric cognitive therapy. Finally at the time of my examination I did not find any objective evidence of cervical radiculopathy caused by the accident that would require surgical intervention.

I certify that the aforementioned statements made by me are true and to the best of my knowledge. These are based on my examination and records provided as discussed above. My opinions in this report are based upon reasonable medical certainty. I am aware if any of these statements made are willingly false I am subject to penalty and punishment.

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Filed 02/03/09

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November 14, 2008

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RE: Gabriel Steif DOI: 02/27/2008 DOB: 04/25/1937

#### Supplemental report

Mr. Pollak:

The following is supplemental report regarding injuries claimed by Mr. Steif. I reviewed reports from Dr. Daniel Kuhn, psychiatrist dated 9/4/08,10/9/08 and 11/5/08.

Dr. Kuhn performed an interview and mental status examination. No mention is made of the medical records or radiologic findings. He then performed an Electroencephalogram (EEG), Quantitative EEG (QEEG), and three evoked potential tests.

The American Academy of Neurology and the American Clinical Neurophysiology Society have previously published a position paper that addresses the use of

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EEG and QEEG in traumatic brain injury.<sup>1</sup> These two major national organizations report "evidence of clinical usefulness or consistency of results are not considered sufficient for us to support its use in diagnosis of patients with postconcussion syndrome, or minor or moderate head injury." In addition this position paper reports: "On the basis of clinical and scientific evidence, opinions of most experts, and the technical and methodologic shortcomings, QEEG is not recommended for use in civil or criminal judicial proceedings."

Research by leading authorities in clinical neurophysiology report "There are no proven pathognomonic signatures useful for identifying head injury as the cause of signs and symptoms, especially late after the injury."<sup>2</sup>

Based on the results of these tests he reports that there is an "indication" that the Mr. Steif suffered diffuse axonal injury, which affects brain function on the cortical and subcortical level. Dr. Kuhn does not address how the cerebral atrophy Mr. Steif has may affect these tests.

The findings Dr. Kuhn reported on Mr. Steif's mental status exam are related to age related changes. The previous CT scans of Mr. Steif's brain showed no objective evidence of trauma but did show objective evidence of age related cortical atrophy (thinning). These objective structural changes are consistent with the age related memory impairments.

Dr. Kuhn's testing is not an appropriate, accepted or valid method to diagnose traumatic brain injury and/or diffuse axonal injury. Mr. Steif has age related cerebral cortical atrophy of previous CT scans of his brain. Mr. Steif did not sustain memory impairment as a result of the accident. Furthermore, due to the

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2/27/2008 accident Mr. Steif did not sustain ay injuries that would require cognitive rehabilitation.

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